

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1587 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
  2. To be referred to the Reporter or not? : YES
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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POPATLAL DAYALBHAI PATEL

Versus

AJITKUMAR BABULAL SHAH  
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Appearance:

NOTICE SERVED for Petitioner  
MR ARUN H MEHTA for Respondent No. 1, 2, 3  
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CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 31/01/2000

ORAL JUDGEMENT

1. The present Revision Application is filed by the original defendant - tenant by invoking the jurisdiction of this Court under Section 29(2) of the Rent Act. The

original plaintiffs had filed the aforesaid suit for getting the decree for possession on various grounds. The Trial Court had dismissed the suit. However, the appeal preferred against the said order was allowed by the learned Extra Assistant Judge Ahmedabad (Rural), Narol. The decree of the appellant Court is therefore, challenged by the petitioner - tenant in the present Revisions Application.

2. Though the notice of Revision Application is served on the petitioner, he has neither remained present nor has engaged any advocate. The learned Advocate Mr. A. H. Mehta for the respondent is present. I have gone through the judgements of both the courts below and I have also perused the records of the case. I have also heard the arguments of learned advocate Mr. A. H. Mehta.

3. It is the case of the plaintiffs that they owned a shop bearing G.P. No. 465/13 situated in Dhandhuka Town and the same was let out to the defendant - tenant at the monthly rent of Rs. 65/-. The tenant has not paid the rent from 1.3.1976 and inspite of demand of the same by way of registered notice, he did not paid any rent. The plaintiffs have also stated in the plaint that the defendant has illegally transferred the suit property to one Patel Kantilal Parsottamdas and accordingly, the tenant has committed an act of subletting. It is also further averred in the plaint that the tenant is not using the suit property for the purpose for which it was let to him. Inspite of the demand notice as contemplated under Section 12(2) of the Bombay Rent Act by which arrears of rent was claimed. The tenant did not comply with the same. As the tenant failed to comply with the said notice, either by tendering the rent or handing over the possession, the aforesaid suit was filed being Civil Suit No. 211/78 in the Court of learned Civil Judge (JD), Dhandhuka for getting the decree for possession as well as for getting the decree for arrears of rent.

4. The original defendant-tenant appeared in the suit and gave his reply by filing written statement at Ex. 11. It was stated by the tenant that he had hired the suit premises from 18.5.1975 and therefore, the period of tenancy begins from that day and not from first date of the month. He asserted that he was regular in making the payment of rent and stated that he was ready and willing to pay the rent. He has also stated that the standard rent should be fixed at Rs. 41/- p.m. and not at the rate of Rs., 65/- and has also contended that he was not in arrears of rent. Regarding arrears of rent,

it has been further submitted by him that he had sent a cheque of Rs. 1950/but the landlord did not encash the same. Regarding subletting, it was stated that he himself was using the suit premises and there was no change of user also.

5. From the pleadings of the parties, the trial Court framed various issues at Ex. 13. Thereafter, after recording the evidence and considering the arguments of both the sides, the trial Court came to the conclusion that the defendant - tenant was occupying the suit premises at the rate of Rs. 65/- p.m. That he was not in arrears of rent for more than six months and that the plaintiff has failed to prove the case against the defendant about subletting. Ultimately, on the basis of the aforesaid findings, the trial Court was pleased to

dismissed the suit of the plaintiffs. The plaintiffs, therefore, carried the matter further, by preferring an appeal being Regular Civil Appeal No. 114/82. The aforesaid appeal was heard by the learned Extra Assistant Judge, Ahmedabad (Rural), Narol. The learned Appellant Judge fixed the standard rent at Rs. 60/- p.m. , which was fixed over and above the taxes. The learned Appellate Judge also came to the conclusion that the plaintiffs have proved subletting and therefore, on the aforesaid ground of subletting, the learned Appellate Judge decreed the suit of the plaintiffs for possession. The defendant tenant being aggrieved by the decree for possession passed by the learned Appellate Judge, has knocked the doors of this Court by invoking the revisional jurisdiction of this Court. However, initially, the aforesaid Revision Application was filed by the petitioner - tenant through his advocate late Shri S. D. Shah, who was subsequently, elevated as a Judge of this Court. Since the advocate engaged by the petitioner was elevated as a judge of this Court, fresh notice was served on the petitioner by the office. However, as per the endorsement, the aforesaid notice is served on the petitioner, but he has not chosen to remain present nor has engaged any advocate. I have, therefore, heard the arguments of other side i.e. learned advocate Mr. A. H. Mehta and I have considered the facts on records as well as I have gone through the judgements of courts below.

6.. The only question which is required to be considered in this Revision Application is whether the learned Appellate Judge has committed an error of law in coming to the conclusion that the defendant - tenant has

committed an act of subletting by illegally transferring the suit property without the consent of the landlords. The learned Appellate Judge has considered the aforesaid aspect in para - 9 of his judgement, it is the say of the tenant that Patel Kantilal was his business partner as alongwith him, he was doing the business of cutlery and accordingly, he denied the case of sub-tenancy as alleged by the plaintiffs- landlords. It is pertinent to note that the tenant has not stated anything about his partnership with said Patel Kantilal in his written statement. The tenant has merely denied the fact of subletting without giving any particulars about the same in his written statement. If, really, said Kantilal Patel was his partner, the defendant would not have missed to point out the same at first available opportunity and would have definitely stated in his written statement. It has been rightly found by the learned Appellate Judge in para - 10 of his judgement that the tenant has not produced any partnership deed on record. Assuming that there was no partnership deed between the tenant and his so called partner then also he should have led some evidence to show that there was a genuine partnership between them. No cogent and reliable evidence has been produced by the defendant to prove about such a partnership between him and said Kantilal Patel. In the aforesaid circumstances, said Patel Kantilal is nothing but a third party in the suit premises and such a third party is given exclusive possession by the original tenant. The theory of partnership therefore, is nothing but an after thought on the part of the tenant in order to get out from the clutches of Section 13(1)(e) of the Bombay Rent Act. It has also been found by the learned Appellate Judge that the defendant has withheld the basic evidence for which no explanation is given by him.

7. In the Revision memo at ground "I", an averments is made by the petitioner that certain standard rent applications have filed by various tenants against the respondents - landlords being Misc. Applications Nos. 13 to 16 of 1973. Out of which, Civil Misc. Application No. 15/73 was preferred by the petitioner in the Court of Civil Judge (JD), at Dhandhuka for fixation of the standard rent of the suit premises on the ground that the petitioner and Kantilal Patel were carrying on business in the premises in partnership and that the rent is excessive. In that proceedings, a technical plea was taken by the landlords that the partnership was not registered one and therefore, the application was not maintainable and therefore, the landlords have also

accepted the fact about the partnership. The said aspect has been considered by the learned Appellate Judge in para - 11 of his judgement. The learned Appellate Judge has found that it was the case of misjoinder of parties and there was no question of joining the said Kantilal Patel as a party in the matter of dispute of standard rent. However, it is required to be noted that whether, the said Kantilal Patel was a partner or not or whether there was subletting or not was not the issue in earlier standard rent proceedings. The present suit has been filed by the landlords for getting the decree for possession on the ground of subletting and on appreciation of evidence, the learned Appellate Judge has come to the conclusion that the premises in question is transferred by the tenant to said Kantilal Patel without the consent of the landlords. This court while sitting in revision application can not reappreciate the evidence and substitute the finding of fact arrived at by the learned Appellate Judge. There is no error of law committed by the learned Appellate Judge in appreciating the facts on record. It is required to be noted that before the learned Appellate Judge a submission was made on behalf of the defendant - tenant that said Kantilal Patel has already vacated the suit premises and he is not using the suit premises and therefore, so called subletting was not further continued. The aforesaid argument was found to be totally irrelevant, by the learned Appellate Judge and according to me very rightly once. It is found that the premises was subjected to sub-tenancy, the landlord is entitled to get decree for possession and subsequently, whether the subtenant has vacated the premises or not is not the relevant consideration, which is required to be taken into consideration. In view of the same, I do not see any infirmity in the judgement of the learned Appellate Judge. Mr. Mehta, learned advocate, appearing for the respondent has relied upon the judgement of this Court reported in 37(1) GLR Page 727, wherein this court has taken a view that the powers of this Court in revision under Section 29(2) of the Bombay Rent Act are not so limited as under Section 115 of Civil Procedure Code, 1908. However, what is contemplated by Section 29, sub-section (2) is to enable this Court to call for the record of a case to satisfy itself that the decision rendered impugned in that revision is according to law. The phrase "according to law", means the Court has to consider whether impugned decision is in any way suffering from error of law or facts resulting into miscarriage of justice. In the instance case, it can never be said that the learned Appellate Judge has committed any error of law, which is required to be

corrected by this Court in the Revision Application. Even otherwise, on appreciation of facts, no other view is possible then the one which is taken by the learned Appellate Judge.

In view of what is stated hereinabove, there is no substance in the above stated revision application and the same deserves to be dismissed and accordingly is dismissed. Rule is discharged with no order as to costs. Interim relief shall stands vacated.

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PALLAV.